

MINUTES

MONTANA SENATE 56th LEGISLATURE - REGULAR SESSION COMMITTEE ON STATE ADMINISTRATION

Call to Order: By **CHAIRMAN MACK COLE**, on March 15, 1999 at 10:00 A.M., in Room 331 Capitol.

ROLL CALL

Members Present:

Sen. Mack Cole, Chairman (R)
Sen. Don Hargrove, Vice Chairman (R)
Sen. Jon Tester (D)
Sen. Jack Wells (R)
Sen. Bill Wilson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Keri Burkhardt, Committee Secretary
David Niss, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted:
Executive Action: SJ 10, HB 362, HB 469, HB 508,
HB 616, SB 521, HB 620

EXECUTIVE ACTION ON SJ 10

Motion: SEN. HARGROVE moved that SJ 10 AMENDMENTS SJ001002.ADN BE ADOPTED. **EXHIBIT**(sts58a01).

Discussion:

SENATOR TESTER stated he was not sure if this was enough encouragement to get them to do something on the plaque or the statue.

SENATOR COLE stated the committee is just passing the Joint Resolution. It will be the Capitol Restoration Committee that will make the final decisions on where and when and how much money they are getting.

SENATOR TESTER asked if there were any notes that go with the resolutions or is it the resolution in and of itself that gets passed out? Is there an opportunity to put accompanying notes with them? **SENATOR COLE** stated not that he was aware of.

SENATOR WELLS stated **SEN. TESTER'S** question raised an interesting point, that being whether this language requires some recognition of Maureen Mansfield on the statue. He points out there is nothing else in the resolution that addresses that issue for either the Senator or Maureen. If there is going to be some kind of an inscription on the statue, and if this committee wants to drive that, it would be important to amend the resolution to contain language that would go on the statue for both the Senator and Mrs. Mansfield.

SENATOR TESTER stated he did not want to dictate to the people doing the statue what needs to be done specifically. He does feel it was conveyed in the hearing, whether it is within the statue itself or on a plaque on the statue, his wife needs to be recognized. If that is communicated to the people in charge, that is all that is necessary. He thought they would act accordingly.

SENATOR COLE stated he remembered **SJ 4** was a broad resolution which had specifically mentioned Mike Mansfield. It talked about putting up plaques, statues and recognition of people. It gives them the right to do what they want to. He felt this would take care of the recognition pretty well.

SENATOR HARGROVE stated since the WHEREAS was added, he felt it should be left up to the Capitol Grounds Committee.

Vote: Motion that **SJ 10 AMENDMENTS SJ001002.ADN BE ADOPTED** carried 5-0.

Motion/Vote: **SEN. TESTER** moved that **SJ 10 DO PASS AS AMENDED.** Motion carried 5-0.

{Tape : 1; Side : A; Approx., Comments : TIME: 10:18 a.m.}

EXECUTIVE ACTION ON HB 182

SENATOR COLE questioned if there were amendments on this bill?

Mr. Niss stated there was, HB018201.adn as per **EXHIBIT(sts58a02)**.

Mr. Niss stated during the testimony on this bill **Mary Bryson, Director of the Department of Revenue**, testified adversely on **HB 182** but for only one reason. That was because the **Department of Revenue** considered the revenue left in the retirement trust fund, for which a beneficiary could not be found, was subject to the provision of the Uniform Unclaimed Property Act. After that testimony the attorney for the Public Employees Retirement Board sat down with some of the members of **DOR** and came up with some amendments and an agreement for a contract between the two departments. Essentially what they have agreed to is to first take out any reference to the Uniform Unclaimed Property Act in the bill. That is what part of the amendments do.

Secondly, they authorize **DOR** in statute. The rest of the unedited amendments on **HB 182** specifically authorize the Public Employees Retirement Board to enter into agreements with state or federal authorities to locate beneficiaries who still have public retirement system assets that have not been distributed to those beneficiaries. Finally, any retirement benefits not claimed by the beneficiary reverts to the public employees retirement account or trust fund account for any of the other retirement systems that this bill and these amendments affect. That money would revert to the trust fund. **DOR** has agreed to the specific language of the Memorandum of Understanding. They have not yet seen the amendments themselves that allow the agreement to be implemented.

He questions whether executive action should be taken due to the fact **DOR** has agreed to a contract but not to the exact language of the amendment that recognizes the legal ethics of the contract.

SENATOR COLE stated he would like to hold off until **DOR** can look at them.

EXECUTIVE ACTION ON HB 362

Motion/Vote: **SEN. TESTER** moved that **HB 362 BE CONCURRED IN.**

Motion carried 5-0. **SEN. TESTER** will carry bill to Senate Floor.

{Tape : 1; Side : A; Comments : Time: 10:27 a.m.}

EXECUTIVE ACTION ON HB 469**Discussion:**

SENATOR HARGROVE stated he has a problem with Christmas Eve Day. There seems to be a fairness element there and he would like to amend that out. He is not necessarily locked into that but would like discussion on the point.

SENATOR TESTER stated he has an amendment to deal with this. The amendment basically eliminates Section 1 of the bill. He has heartburn over the situation because basically the bureaucracy is let off the hook because of low job performance and money.

Motion: **SEN. TESTER** moved that **HB 469 AMENDMENT #HB046901.adn BE ADOPTED. EXHIBIT(sts58a03).**

SENATOR COLE questioned if the amendment struck line 29? **SEN. WELLS** stated it takes out about election day. **SEN. COLE** stated they will have election day off but not Christmas Eve Day? **SEN. TESTER** stated yes.

SENATOR WELLS stated he disagrees with the amendment and he does not feel the sponsor of the bill brought the amendment because of a lack of production. It was not his intent to address productivity of government workers. That issue came out in the hearing but the original point was these people get election day off when no one else does and there is no need for that any longer. The only reason Christmas Eve Day was picked as a vacation day was, if election day was eliminated and nothing given back in exchange, there would have been a building full of state employees in here and probably rightfully so. In order to make it less contentious, another day was put back in. He agrees with the point about productivity expressed during the hearing but he does not agree that was the original intent addressed by the bill. He assumes there are about half the people who take the 24th off as leave one way or another. Productivity is certainly reduced but through no fault of the persons remaining on duty, it is just that the others are gone. His constituents have questioned him as to why the state employees get election day off and others do not. The polls are open early and don't close until 8:00 p.m. and that accommodates all the working people paying the taxes who support this state in local government. He feels this is a very fair offer.

SENATOR TESTER stated it is fair and gives the state employees another day off. He feels that day off costs far more than the fiscal note reflects per year. He does not think that is very wise. The reason for justification was productivity. We could

afford to do it because productivity was down. He does not agree with that and the amendment takes care of that.

SENATOR WILSON stated a state employee gets a day off and they get pay, how is that distinct from a leave day? Do they use a leave day on a day off? **SEN. COLE** stated a day off and a leave day are basically the same. This bill is talking about a holiday. One paid holiday is being switched for another holiday. **SEN. WILSON** questioned if they received x amount of leave days over and above paid holidays? Would this be a substantial thing taken away? **SEN. WELLS** stated yes. **SEN. WILSON** stated he agrees with **SEN. WELLS** that it does not make much sense to have election day off and it would be a lot nicer to have the day before Christmas off.

SENATOR HARGROVE stated everything everyone has said is exactly right, there is an element of fairness here. He feels the sponsor's reason for getting rid of that is valid and yet in looking after the taxpayers money, he finds no real reason to go along with it.

SENATOR WELLS questioned if they have the day off, why does the money go up? If they were there working, they would still be paid the same amount of money. The only difference between them being there or not being there is not the money, the only difference is the productivity. **SEN. TESTER** stated if one considers why someone is hired it is due to productivity, man hours and production. If there are not people on the job working, they don't get the job done that day and you take that times the number of employees, you lose that many man days per year. That has to be made up somewhere and if it does not have to be made up there is poor administration over those people because you are overstaffed. If productivity is the justification to give the days off, he feels that is a poor reason. **SEN. WELLS** stated when talking about the state employment rolls and the amount of their production, it is difficult to find an hours worth of production for every hour of pay. It is difficult to tie that down over a years time. He agreed if they were given 200 days off a lot would be lost, but he did not feel giving them the day before Christmas off was losing a lot especially doing it every other year. **SEN. TESTER** stated the same argument could be used for the day after Thanksgiving and New Years Eve day. It would feel good to give them all the time off but the fact is production will be lost and it will have to be made up somewhere whether in overtime hours or additional staff. **SEN. WELLS** stated election day is being lost totally every other year now and that would be brought back totally as compared to the day before Christmas which would be a less productive day he assumes. **SEN. TESTER** stated if the basis

is productivity, then the administration needs to be looked at not a day off. **SEN. WELLS** stated there are a number of people who have felt for years that state administration needs to be looked at and the total stated number of employees but that is a different argument. **SEN. HARGROVE** stated he was not sure that was a different issue. Several FTE's could be cut from state government based on the number of man days we are saying would be necessary. He supposes that would turn it into a revenue bill. **SEN. WILSON** stated **SEN. TESTER** does have honest productivity concerns. Another thing floating in the hallway is it is good to have state employees off on election day because their interests tend to align the certain political party. His opinion is they do not need to have election day off, no one else does. Christmas Eve day would be a much better day to have off.

SENATOR COLE stated he felt they were all in agreement there was no need to have election day off for state employees since no one else gets it off. The discussion is really are we going to give Christmas Eve off because it does pick up two more days over a four year period. He does not think it is so much the actual productivity, it is more when half of the staff is gone the other half of the staff are not doing as much. For that reason he is going to vote against the amendment and hopefully get this passed out as is.

Vote: Motion that **HB 469 AMENDMENT #HB046901.adn** BE ADOPTED failed 2-3 with **SEN. TESTER, WILSON AND COLE** voting no.

SENATOR WELLS stated he would like to propose another amendment dealing with signs. On page 3, lines 5-6, it talks about a campaign sign placed in violation may be removed and returned to the campaign chairman. That bother him from the standpoint of the word may. He feels it may strengthen the bill by adding the sentence, "if the sign is removed, the campaign treasurer will be notified". The bill is written to say may remove it, may return it to the treasurer. He did not feel they had to return it but he feels the treasurer should be notified.

Motion: **SEN. WELLS** moved to **AMEND HB 469 TO ADD "IF THE SIGN IS REMOVED, THE CAMPAIGN TREASURER MUST BE NOTIFIED"** BE ADOPTED.

SENATOR WILSON stated it seems strange that someone could essentially break the law and then require someone to help him because he broke the law. **SEN. WELLS** stated sometimes there are campaign teams that have a sign placement foreman that do it for them and you are not certain where the sign has been placed. The foreman is breaking the law and ultimately you are responsible but it is a temporary thing and an aggravating thing when signs disappear. It is nice to be notified when the signs disappear.

SENATOR HARGROVE questioned if "may" translates both to removed and to returned? **Mr. Niss** stated that was correct.

SENATOR COLE stated it makes no sense in his district to be returned to the campaign treasurer when she lives 100 miles away. Some signs are 200 miles away from the treasurer or himself.

SENATOR WELLS stated he felt that was why "may" was used in the first place because they would not want to say will be returned 200 miles to the treasurer. His amendment would help in that, at least, they would be notified.

SENATOR HARGROVE stated that is the person they legally know about because their name is on the sign.

Vote: Motion to AMEND HB 469 TO ADD "IF THE SIGN IS REMOVED, THE CAMPAIGN TREASURER MUST BE NOTIFIED" BE ADOPTED carried 4-1 with Sen. Wilson voting no.

Motion/Vote: SEN. WELLS moved that HB 469 BE CONCURRED IN AS AMENDED. Motion carried 3-2 by Roll Call Vote with Senators Tester and Hargrove voting no. SEN. WELLS will carry bill to Senate Floor.

EXECUTIVE ACTION ON HB 508

Motion: SEN. TESTER moved that HB 508 BE CONCURRED IN.

Discussion:

SENATOR WELLS questioned why the fiscal note indicates an expenditure in 2000 but not in the second year? **SEN. TESTER** stated the date of review is driven by the election.

Vote: Motion that HB 508 BE CONCURRED IN carried 5-0. SEN. LYNCH will carry bill to Senate Floor.

{Tape : 1; Side : B; Comments : Time: 11:01 a.m.}

EXECUTIVE ACTION ON HB 616

Motion/Vote: SEN. TESTER moved that HB 616 BE CONCURRED IN. Motion carried 5-0. SEN. WILSON will carry bill to Senate Floor.

EXECUTIVE ACTION ON HB 632**Discussion:**

SENATOR HARGROVE asked for a summary of the amendments from counsel. **Mr. Niss** stated this legislation solves the problem of the Yellowstone County Clerk and Recorder and another Clerk and Recorder regarding reactivation of electors who did not vote in the last federal election at which a Senator, Representative or President were elected. It clarifies the law where it was thought if you were an inactive voter, you could not then vote in a local election.

SENATOR TESTER stated presently you can reactivate up to a day before. He feels the committee needs to make it easier for people to vote that are eligible to vote. This does not affect the federal rule, correct? **Mr. Niss** stated it was only a cure for a local election.

Mr. Niss stated he would collect additional information and they would hold off on executive action until tomorrow.

SENATOR WELLS stated **REP. BITNEY** stated in his closing that about half of the counties allow one day before to reactivate and about half the counties require 30 days.

SENATOR WILSON stated whether it is 30 days or one and someone goes in and gets turned away, it is bad in both cases. He feels there should be same day activation.

SENATOR HARGROVE stated his concern was confusion regarding if there was 30 days for some people and one day for others. There would be people coming in for one and being turned away.

Mr. Niss stated someone on the committee asked the reason for wanting to set it back 30 days and the only answer that came out was because it was administratively difficult to do it any closer to the election than 30 days because the administrator has so many other things to do to get ready for the election.

SENATOR TESTER stated he would be inclined to amend the bill so all the counties have to do it one day before the election but he does not want to put an unrealistic mandate on those people. He feels it needs to be made as easy as possible.

SENATOR WELLS stated if a person has been irresponsible or inactive enough to get on the inactive list, he feels they should not be able to come in the day before the election or the day of

the election to get back on the roles. He feels that person should be responsible and attentive enough to apply 30 days in advance.

SENATOR TESTER agreed that there are a lot of people asleep at the wheel and don't take it seriously but he feels everyone should be encouraged and given the right to vote.

SENATOR WILSON stated he did not care if they were inactive or not, at least they had the initiative at one point in their life to vote. There are people who have never voted and never will vote.

SENATOR HARGROVE stated we are making it a little harder on the non-federal elections where there is the lowest turnout anyway.

SENATOR WELLS stated in one sense he would like to make all counties make it one day but on the other hand if the Administrators have heart burn with it he does not want to do that to place an extra burden on them. His feeling is to table the bill and leave it status quo. He wonders if additional testimony or information would clarify some of this discussion.

SENATOR COLE suggested having the Secretary of State's office give them an update on what counties require 30 days and what counties require one day. Then the committee would know the background regarding the number of letters that go out to inactive voters and how it is handled. The vote on this bill will be postponed until further information is received.

{Tape : 2; Side : A; Comments : Time: 11:20 a.m.}

EXECUTIVE ACTION ON SB 521

Motion/Vote: SEN. TESTER moved that SB 521 DO PASS. Motion carried 5-0.

EXECUTIVE ACTION ON HB 620

SENATOR COLE stated this bill was referred back to committee from the Floor.

SENATOR TESTER stated his main question is if this bill is needed? Is it taken care of in statute already? **SEN. HARGROVE** stated it is not in statute already. It codifies some decision law. In practice it is not needed but, in terms of statutory decision making, it is. Regarding that particular incident, **Greg Petesch** did not feel it had occurred and the rules probably do

keep people from doing it, however, law does not. This would do that.

SENATOR TESTER stated if the law does not keep inmates from getting this type of information it should and therefore the bill does have a function.

SENATOR WELLS questioned how this bill prevents inmates from getting the information? **SEN. HARGROVE** stated he knows it is almost impossible for an inmate to get anything, but that is under rule and not under statute.

SENATOR TESTER stated from a practical standpoint they probably cannot get them, but from an idealistic standpoint they could.

Mr. Niss stated the reason there is a change is because not only is individual or group safety not mentioned in any statute, there are no cases on individual or group safety either. The language being added on page 2(3) and (4) is not language from a Montana Supreme Court decision or any other decision, that is language being added with a statute because the sponsor thinks that the way it ought to be.

SENATOR WELLS questioned **SEN. GLASER'S** concern that contractors or people with legitimate right to this information would not be able to get it. **SEN. TESTER** stated he was dealing with a different section of law entirely.

Mr. Niss stated the issue of contracting is a whole different issue and is not addressed in this bill.

SENATOR HARGROVE stated with all that said and done, it is hard for him to oppose when the release of that information may jeopardize the safety facility, personnel, the public or inmates of the facility. This does not just address a jail break.

SENATOR TESTER stated the reason he pulled this off the floor was because **SEN. BECK** asked him a point blank question as to whether these inmates had the blueprints and he was given the impression they had. That turned out to be not true, the inmates did not have the blueprints. The inmates could still get the blueprints if the rules did not still exist by the prison management to deny them access. Someone could change the rules and they could get access.

Motion/Vote: **SEN. TESTER** moved that **HB 620 BE CONCURRED IN.**
Motion carried 5-0. SEN. TESTER will carry to Senate Floor.

{Tape : 2; Side : A; Comments : Time: 11:41 a.m.}

ADJOURNMENT

Adjournment: 11:41 A.M.

SEN. MACK COLE, Chairman

KERI BURKHARDT, Secretary

MC/KB

EXHIBIT (sts58aad)